



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Chui-Kuei Chiu

Application No.: 09/883,195

Filed: June 19, 2001

For: CALIBRATION METHOD  
OF AN IMAGE-CAPTURE  
APPARATUS

Examiner: Memberu, Beniyam

Art Unit: 2626

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. 1.181**COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notice of Abandonment, dated July 1, 2005 Assignee respectfully petitions the Office under 37 C.F.R. 1.181 to withdraw the holding of abandonment.

**ARGUMENT**

In an Office Communication dated July 1, 2005 the Examiner issued a notice of abandonment for the above-identified patent application. In this notice, the Examiner indicated that the application was abandoned for failure to timely file a proper reply to the Office letter mailed on December 15, 2004. In addition, the Examiner indicated that on June 23, 2005 the Examiner Spoke with attorney Kien Le from the firm of Lowe Hauptman Gilman & Berner, and was later informed of the abandonment of the above-identified application.

Under 37 C.F.R. 135 a pending patent application may be abandoned for failure to reply within the statutory period for reply. The most recent office action in the above-identified patent application

indicates that the Office Action was mailed on December 15, 2004. By facsimile transmission on June 15, 2005 a fully responsive reply to the December 15, 2004 office action was timely filed with the USPTO with the appropriate petition for an extension of time and the corresponding fee. This response was filed within the statutory period for reply. In addition, a properly executed Power of Attorney appointing Gerald Haynes, Registration Number 32,854, and revoking any previous powers of attorney was submitted along with the timely filed Office Action Response. In addition, the image file wrapper from Public PAIR clearly indicates that the response to office action and accompanying documents were received by the USPTO on June 15, 2005. In addition, under 37 C.F.R. 1.8 the attached Auto-reply facsimile transmission, copies of the filed documents, and a statement based on personal knowledge that the documents were filed in a timely manner is sufficient evidence that the documents listed (Power of Attorney, Petition for extension of time, Credit Card Payment form, Statement under 37 C.F.R. 3.73(b) with a copy of the assignment, and a response to the December 15, 2004 office action) were received at the USPTO on June 15, 2005. As noted above, the notice of abandonment indicates that on June 23, 2005 the Examiner Spoke with attorney Kien Le from the firm of Lowe Hauptman Gilman & Berner, and was later informed of the abandonment of the above-identified application. However, it is clear from the attached power of attorney that Kien Le was no longer the attorney of record and could not bind the Assignee with any statement, or written submission.


It is unclear from the record why the Examiner did not accept the response to office action and power of attorney filed on June 15, 2005. 37 C.F.R. 1.34 states that "When a registered patent attorney or patent agent acting in a representative capacity appears in person or signs a paper in practice before the United States Patent and Trademark Office in a patent case, his or her personal appearance or signature shall constitute a representation to the United States Patent and Trademark Office that under the provisions of this subchapter and the law, he or she is authorized to represent the particular party in whose behalf he or she acts. In filing such a paper, the registered patent attorney or patent agent must specify his or her registration number and name with his or her signature. Further proof of authority to act in a representative capacity may be required." The Office Action response, petition for extension of time, and statement under 37 C.F.R. 3.73(b), filed on June 15, 2005 were

properly signed by Gerald Haynes, and specified his Name and registration number, Registration No. 32,854, and as such should have been entered by the Examiner. In addition, the authority of Gerald Haynes to act on behalf of the Assignee was clearly established by the properly executed power of attorney, and certificate of name change attached to the statement under 37 C.F.R. 3.73(b). If the Examiner had questions as to the authority of Gerald Haynes to act on behalf of the assignee then the Examiner could have asked that additional proof be provided. However, it is unclear why the Examiner did not even consider the timely filed fully responsive Response to Office Action of June 15, 2005 and instead determined that the above-identified patent application was abandoned. In addition, Kien Le as a former attorney for the Assignee did not have the power to abandon the above-identified application over the phone (as appears to be the case) because Kien Le was no longer an attorney of record in the case and because in order to comply with 37 C.F.R 1.138 a request to expressly abandon a pending patent application must at least be in writing. See MPEP §711.01.

CONCLUSION

In view of the foregoing, it is respectfully requested that the holding of abandonment of this patent application be withdrawn and that the fully responsive Response to Office action filed on June 15, 2005 be entered in this patent application. If the Examiner has any questions, he is invited to contact the undersigned at (503) 439-6500.

Respectfully submitted,



Steven J. Munson  
Reg. No. 47,812

Dated: 9/1/2005

c/o  
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